

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**November 4, 2019**

**Elisabeth A. Shumaker**  
**Clerk of Court**

KARL FONTENOT,

Petitioner - Appellee,

v.

SCOTT CROW, Interim Director,

Respondent - Appellant.

No. 19-7045  
(D.C. No. 6:16-CV-00069-JHP)  
(E.D. Okla.)

**ORDER**

Before **HOLMES** and **PHILLIPS**, Circuit Judges.

Scott Crow, the Interim Director for the Oklahoma Department of Corrections (ODOC), filed a motion for a stay pending appeal of the district court's decision granting Oklahoma state prisoner, Karl Fontenot, a conditional writ of habeas corpus. The district court's decision states that the writ will issue, unless within 120 days of the entry of its decision—which is December 19, 2019—the State of Oklahoma grants Mr. Fontenot a new trial or, in the alternative, orders his permanent release from custody.

The State, through ODOC, seeks a stay pending appeal to prevent Mr. Fontenot's immediate retrial or his permanent release. In his response to the stay motion, Mr. Fontenot states he does not oppose a stay of his retrial if he is released on bond pending the State's appeal. He also agrees to be subject to conditions of release to ensure he stays in Oklahoma while this court considers the State's appeal.

After considering the parties' submissions, the rules governing release in a habeas appeal under Federal Rule of Appellate Procedure 23, and the traditional stay factors outlined in *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987), we grant in part and deny in part the motion for stay. We grant a stay pending appeal of the district court's order to grant Mr. Fontenot a new trial. We deny the request to stay Mr. Fontenot's release from custody on December 19, 2019. However, we direct the district court to set a briefing schedule for the parties to propose conditions of release for Mr. Fontenot pending appeal and, if necessary, to hold a hearing on appropriate conditions of release. The district court's briefing schedule shall ensure that appropriate conditions of release are in place before Mr. Fontenot's release on December 19, 2019.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a long horizontal flourish.

ELISABETH A. SHUMAKER, Clerk